COA CASE NO.63110-1-I
SUPREME CT NO. 83731-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

VS.

CHAD A. PIERCE,

PETITIONER.

PETITION FOR DISCRETIONARY REVIEW OF THE COURT OF APPEALS DECISION

PREPARED BY: CHAD A. PIERCE-714567-KB-22-L
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A. IDENTITY OF PETITIONER.

The petitioner, Chad Pierce, hereby respectfully requests this court accept review of the court of appeals decision designated in part B.

B. DECISION TO BE REVIEWED.

The petitioner respectfully asks that this court accept review of the court of appeals decision entered on 9-22-09 which a said copy is attached as Appendix A at 1-3 as that decision is in said violation of the laws and constitutional protections afforded to this petitioner.

C. ISSUES PRESENTED FOR REVIEW.

1. THIS COURT SHOULD ACCEPT REVIEW OF THE COURT OF APPEALS DECISION TO DETERMINE THE TRUE LEGISLATURES INTENT BEHIND THE CREATION OF RCW 72.09.111 AS APPLIED IN CONNECTION TO RCW 9.94A.760?

2. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION DUE TO THAT DECISION BEING A VIOLATION OF THE JUDGMENTS PRONOUNCED BY THE SENTENCING COURTS?

3. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION TO DETERMINE WHETHER DOC POLICY 200.000 IS IN FACT VIOLATIVE AND INCONSISTENT WITH THE PROVISIONS OF RCW 9.94A.760 AND 72.09.111?

   A. ALL LFO ASSESSMENTS ARE STATUTORIALLY GROUPED AS ONE.

   B. THE LFO'S CANNOT BE COLLECTED UNTIL RESTITUTION IS FIRST SATISFIED IN FULL.

   C. IN ORDER TO COLLECT LFO'S FROM AN OFFENDER, THE DEPARTMENT MUST FIRST ISSUE A NOTICE OF PAYROLL DEDUCTION TO THE INMATE.

   D. THE DEPARTMENTS COLLECTION OF RESTITUTION AND LFO'S IS EXPLICITLY LIMITED BY LAW TO DEDUCTIONS FROM INMATES WAGES, GRATUITIES, AND WORKER'S COMPENSATION BENEFITS IF EMPLOYED IN A CORRECTIONAL INDISTRIES JOB OR FROM INMATES RECEIVING THE SAME FROM OUTSIDE RESOURCES.

   E. THE DEPARTMENT SECRETARY FORMULATED DOC POLICY 200.000 WHICH IS CONFLICTING TO THE LEGISLATURE'S INTENT AND REQUIREMENTS OF LAW.

4. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION BECAUSE IT ALLOWS THE DEPARTMENT TO VIOLATE THE SEPARATION OF POWERS DOCTRINE?

5. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION WHICH FAILS TO APPLY THE "RULE OF LENITY" TO THE PETITIONER'S CLAIMS AND MISAPPLIED THE LAWS TO THE FACTS?

6. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION WHICH IS IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONAL PROTECTIONS OF DUE PROCESS WHICH ESTABLISHES AN UNLAWFUL RESTRAINT OF THE PETITIONER?

D. STATEMENT OF THE CASE.

On May 17th, 2002 the petitioner was sentenced to a term of 30.75 months for the crime of Attempted Robbery In the First Degree. The court imposed a $500.00 VPA and waived all other fees. The petitioner never received any paperwork for any restitution setting and is without knowledge to state such. See App. A at 28-38.

The petitioner, on a monthly schedule paid off the $500.00 LFO. The payments started once the petitioner was transfered to reynolds work release on 7-18-03 where the petitioner paid $5.86 the petitioner then paid $52.73 on 8-8-03; $25.00 on 8-22-03; $35.00 on 9-19-03; $44.00 on 10-07-03; $73.25 on 10-17-03; $50.00 on 11-26-03; $20.00 on 1-14-04; $50.00 on 1-27-04; $50.00 on 2-26-04; $50.00 on 3-18-04; $50.00 on 4-30-04; $50.00 on 5-21-04; $50.00 on 7-01-04; $50.00 on 7-30-04; $20.00 on 8-31-04; $50.00 on 10-07-04; $50.00 on 10-19-04; and $20.00 on 12-03-04. The total amount paid personally by the petitioner out of his own pocket on a monthly basis was $795.84. Id. at 39-40.

The department, while the petitioner was in total confinement, and preceeding the first 7-18-03 payment, did collect a total of $472.39 making the new total on the $500.00 LFO as being $1,214.45. Id. at 73-74.

On 3-18-05 the petitioner was arrested on a community custody violation and was eventually charged with a new crime to which this petition reflects. The petitioner was charged and sentenced for the crime of child molestation in the first degree to a term of 108 Mos, and was ordered to pay a mandatory $500.00 VPA, all other costs, to incalude cost of incarceration were waived by the judge. Id. at 44.

The judgment of 2005 cause also waived all interest on the $500 VPA fine. Id.

The department has violated the judgment and sentence of both 2001 and 2005 in collecting upon the cost of incarceration fees which were conceeded to being explicitly waived by the judge in its discretionary power. Id. at 1, 31, 45, and 124.

The department has also decided to collect the costs consisting of COI (cost of incarceration) at a rate of 20% from all money received by an inmate regardless of the source; 5% for CVC (crime victim compensation); 20% for cost of supervision (COS); 20% for LFO's; 20% for Department of Child Support fees; 10% for savings; 20% for Prison Litigation Reform Act (PLRA); and 20% more for the internal debt created while an inmate is in the institutions. Id. at 83.

The department has created doc policy 200.000 which was supposed to follow the statutorial requirements as established by Washington State Legislature found in RCW 9.94A.760 and 72.09.111. But, that is not what the DOC Policy consists of as will be argued and proved, infra.

Therefore, the departments collection from this petitioner of fees not imposed by the court that were explicitly waived, and the $500.00 VPA being fully satisfied as established by the evidence, establishes that the department is unlawfully restraining the petitioner to which he is entitled to the relief of this petition.

The Department has collected even more than the amount as stated at 2 supra, and has collected $795.84 More making the new total fee collection as being $2,010.29. Id. at 40-41, 73-74.

The department has collected $45.68 for COI; $22.88 for CVC; $673.50 for COSFD; and $472.39 for LFO's. Id. The department has also unlawfully, for the purpose of gaining illegal collections, created two (2) accounts receivable for CVC which is CVC/CVCS; COS which is COS/COSFD; and COI which is COI/COIS. The department failed to respond to this issue in the PRP as being a fruadulent action unauthorized by law. The department's collections are being conducted simultaneously and in violation of the laws applicable thereto.

The petitioner inquired as to the lawful authority of the said collections by the department by utilizing the grievance and kite internal syatems and the department responded stating that it did not know what was owed and was collecting to satisfy the court's judgmants and sentences after searching the files. Id at 95. The department is collecting from all money received by this petitioner a total of 75% to satisfy fines that are explictly waived. The said petitioner used clean-hands and good-faith and attempted to get the department into compliance to teh judgments pronounced, but the department failed to correct its mistakes and altered the factual statement that it was collecting to satisfy the court once notified by this petitioner to that said collections were occuring regardless of the judge's language in the judgment and senteces. App. A at 94-111.

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The petitioner filed a personal restraint petition in the Court of Appeals. App. A at 94-111. The state responded to the petition and went silent as to several material issues, especially the separation of powers doctrine violations. Id. at 122-136. The petitioner filed a reply to the states response. Id. at 137-149.

The Court of Appeals denied the personal restraint petition as being frivolous. Id. at 1-3. This petition timely follows.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. This Court should accept review of the Court of Appeals decision to determine the legislatures true intent behind the creation of RCW 72.09.111 as applied in connection to RCW 9.94A.760.

The courts statutory interpretation is an issue of law, and is determined de novo by the courts. State v. Mannering, 150 Wn.2d 277, 282 (2003)(citing Lady of Lourdes Hosp. v. Franklin County, 120 Wn.2d 439, 443 (1993). The Court applies the statute as it was written and "assume[s] that the legislature means exactly what it says." In re custody of Smith, 137 Wn.2d 1, 8-9 (1988) (quoting State v. McCraw, 127 Wn.2d 281, 288 (1995)). Statutes must be read to avoid absurd and strained interpretations. State v. McDougal, 120 Wn.2d 334, 350 (1992). Where the language is plain and unambiguous, a court will not construe the statute but will glean the legislatures intent from the words of the statute itself, regardless of a contrary interpretation by an administrative agency. See Bravo v. Dolsen Cos., 125 Wn.2d 745, 752, 888 P.2d 147 (1995); Smith v. N. Pac. Ry., 7 Wn.2d 652, 664, 110 P.2d 851 (1941).

A statutory term that is left undefined should be given its "usual and ordinary meaning and courts may not read into a statute

a meaning that is not there." State v. Hahn, 83 Wn.App. 825, 832, 924 P.2d 392 (1996). If the undefined statutory term is not technical, the court may refer to the dictionary to establish the meaning of the word. Heinsma v. City of Vancouver, 144 Wn.2d 556, 564, 29 P.3d 709 (2001).

However, the sentencing "court's authority is limited to that expressly found in the staututes. If the statutory provisions are not followed, the action of the court is void." State v. Theroff, 33 Wn.App. 741, 744, 657 P.2d 800 (1983)(citing State v. Eilts, 94 Wn.2d 489, 495, 617 P.2d 993 (1980).

Furthermore, "any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed." RCW 9.94A.345.

The legislature created several statutorial provisions that deal with collection of court imposed Legal Financial Obligations. Namely, RCW 9,94A.760; RCW 9.94A.772; and RCW 72.09.111.

The statutorial provision of RCW 9.94A.760 holds in part:

> "(1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence..." (emphasis added).

See also the predessor RCW 9.94A.145(1). This language explicitly authorizes and places the power to either impose legal financial obligations, or waive said obligations in the hands of the Judge, not the department. Furthermore, RCW 9.94A.760 reads in part:

> "(2). If the court determines that the offender , at the time of sentencing, has the means to pay for cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, ... All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county

and the cost of incarceration in a prison shall be remitted to the department..."

The State, the Court of Appeals in its decision both conceed that the sentencing court had explicitly waived the cost of incarceration fees as well as all other fees with exception of the $500.00 VPA which has been satisfied. See App. A at 1, 124.

But, nonetheless, the Court of Appeals and the State both assert that the legislature's intent of RCW 72.09.111 authorized collection of the cost of incarcerations and fees not owed as an independent authority above and beyond the court's judgment.

This argument at "first blush" would seem logical and properly placed to support the state's as well as the Court of Appeals position. But, the legislature's intent was not to authorize any separate power to collect waived fees by the Department, but to allow the deaprtment the power to help the County Clerk's collect on unpaid LFO's from offender's. This is evidenced by the language of the legislature in which states:

"BE IT ENACTED BY THE LEGISLATURE OF THE LEGISLATURE OF THE STATE OF WASHINGTON...New Section. Sec. 13 The legislature intends to revise and improve the process for billing and collecting Legal Financial Obligations. The purpose of sections 13 through 27 of this act is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative officer for the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for the courts. The intent of Sections 13 through 27 of this act is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections. Sec. 14. RCW 9.94A.760 and 2001 c 10 § 3 are each amended to read as follows..."

See S.S.B. No. 5990, Laws of 2003 chap. 379 §§ 13-14.

The language of the legislature was clear that the amendment to RCW 9.94A.760 was to allow the department, a civil entity, to be allowed to collect from inmates to help satisfy the unpaid fees of the Court, not to authorize collections of waived fines.

The judgmant being criminal in nature, and the department being civil in nature, needed the harmonization of the laws in order to ensure adequate payments to the courts, not to the department itself on separate fees. The closest statute that the allowance of the department to be able to collect is RCW 9.94A.772 and that statutorial provision reads:

> "LEGAL FINANCIAL OBLIGATIONS-MONTHLY PAYMENT-STARTING DATES-CONSTRUCTION. Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencment dates are to be construed to be applicable soley as a limitation upon the deprivation of an offender's liberty for nonpayment."

RCW 9.94A.772.

This statutorial provision only authorizes the Department to be able to collect fees imposed by the court's on the judgments even if the language states that said fees are to be collected at a later date. Nothing in this provision explicitly authorizes the department to collect fees for itself as a separate fee. That is the sole issue of the statutory interpretation of 72.09.111 as it is applied to 9.94A.760 for the allowance of the department to be allowed collection of fees that were imposed by the courts.

Therefore, the Court of Appeals use of RCW 72.09.111 to allow the Department to collect fees that were never imposed is not in compliance to the true legislature's intent of the harmony of law.

Therefore to interpret the statutorial provision of RCW 72.09.111 to mean that the department is authorized by our legislature to collect the cost of incarcerations and LFO's that are not imposed by the court in the inamtes judgment and sentence is to read into that statutorial provision an absurd and strained interpretation that is not there.

The legislature intended by enacting RCW 72.09.111 the intent that the department would be able to collect for the judgment and pay said amounts towards the cost of incarceration to be remited to the department as ordered by the court. That statutorial provision is equally clear that the judicial officer, not the department, may either impose or not impose said LFO's at the judge's discretion. Therefore, the statutorial meaning of said provisions was very plain and unambiguous therefore the Court of Appeals and the State were to apply the statute as written, not to interpret said provision to the contrary.

Therefore, the Court of Appeals decision is in conflict to our legislatures true intent behind the meaning of the statutes, and therefore this court should hold that the decision entered is erroneous and therefore must reverse said order.

2. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION DUE TO THAT DECISION BEING A VIOLATION OF THE JUDGMENT PRONOUNCED BY THE SENTENCING COURTS?

It is without dispute that both the state in its pleadings, and the Court of Appeals in its decision, have conceeded to the factual assertion that no costs were imposed by the trial and sentencing courts in the petitioner's 2001 and 2005 causes, with the only exception being the $500.00 VPA which has been satisfied. See App. A at 1. 124. The parties have also conceeded that the

courts explicitly waived the cost of incarceration fee. Id. Thus, the department is statutorially without the power and authority necessary to collect on LFO's that do not exist or were stated in the judgment and sentence as explicitly waived. Therefore, the departments collection of the LFO's is an unlawful restraint for the purpose of gaining relief from this court.

3. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION TO DETERMINE WHETHER DOC POLICY 200.000 IS IN FACT VIOLATIVE AND INCONSISTENT WITH THE PROVISIONS OF RCW 9.94A.760 and 72.09.111?

The petitioner hereby adopts and incorporates by refrence the legal argument as briefed at 7-8 supra which argues the statutorial interpretation that must be applied in addressing this issue.

A. ALL LFO ASSESSMENTS ARE STATUTORIALLY GROUPED AS ONE.

The provisions of RCW 9.94A.760 reads in pertinent part:

> "(1) Whenever a person is convicted in superior court, the court may order the payment of legal financial obligations as part of the sentence. The court must either on the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law...(2) The court may require the offender to pay for cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison... payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department... prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional years for payment of legal financial obligations including crime victims' assessments... The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations."

RCW 9.94A.760 (emphasis added).

The language of this statutorial provision clearly reads that

legal financial obligation is determined to be consisting of the Cost of Incarceration, Crime Victim Compensation, Division of Child Support, Prison Litigation Reform Act, and Legal Financial Obligations. The true legislative intent, as defined and set forth in this statute, is plain and unambiguous on its face in holding that lFO's are in one category, not divided up into separate categories for the purposes of payment to the courts. Not to be separated as distinct collection blocks for gaining more money which the department has managed to do in enforcing DOC Policy 200.000.

B. THE LFO'S CANNOT BE COLLECTED UNTIL RESTITUTION IS FIRST SATISFIED IN FULL.

The statutorial provisions of RCW 9.94A.760 further hold in pertinent part:

> "On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monitary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless ordered by the court..."

RCW 9.94A.760 (emphasis added).

The legislative intent of this provision is equally clear that the assessment of restitution takes precedence over all other LFO's, and that language is equally clear that it is the county clerk, not the department, who is to distribute the LFO funds proportionally among all other fines, costs, and assessments imposed by the court.

This language is plain and unambiguous in the power of the department being only to collect LFO's as one assessment, and not as numerious collections for purposes of gaining severely high

percentage rates from offenders money made while in prison.

The language is equally clear and plain on its face in stating that the department is ONLY to collect upon the said restitution imposed by the courts first until fully satisfied, then the collections of all other LFO's may be collected in one grouping, not in separate groups for higher percentage collections. Therefore, the departments activation and enforcement of DOC Policy 200.000 is violative of the statutorial scheme of both RCW 9.94A.760 and 72.09.111 as intended by our legislations enactments.

C. IN ORDER TO COLLECT LFO'S FROM AN OFFENDER, THE DEPARTMENT MUST FIRST ISSUE A NOTICE OF PAYROLL DEDUCTION TO THE INMATE.

The legislature made it very clear that the department must in fact order a notice of payroll deduction, which has several pre-requisite safeguards that must be employeed as well, prior to any collection of the costs associated with LFO's from the court order.

The provision of RCW 9.94A.760(3) holds in pertinent part:

> "The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deductions is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to teh judgment and sentece or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-witholding action, without further notice to the offender if a monthly payment is not paid when due..."

The other safeguards employeed and asserted by the legislature as set forth in the provision of RCW 9.94A.760 read in part:

> "(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and teh location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department. (6). After completing the investigation, the

department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation."
RCW 9.94A.760(5)(6).

Furthermore, the statute reads in pertinent part that:

"(4)...The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The County clerk is authorized to collect unapid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations."
RCW 9.94A.760(4) (emphasis added).

The statute further provides that:

"(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for teh legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender."
RCW 9.94A.760(9).

And last, but not least, the statute further states in part:

"(10)(c) The billing shall direct payments, other than outstanding cost of supervision assessments made under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly..."
RCW 9.94A.760(10)(c)(d).

The Legislature's intent is plain and unambiguous in setting up several safeguards under RCW 9.94A.760 which prevents the Department from collecting upon Restitution and LFO's unless and until there has been a monthly assesment recommendation once the offender has taken an oath as to the present, past, and future capabilities to earn enough to make the payments set. Further, this statute is unambiguous in stating that the department can only collect after the offender has failed to make a monthly payment towards assesments.

D. THE DEPARTMENTS COLLECTION OF RESTITUTION AND LFO'S IS EXPLICITLY LIMITED BY LAW TO DEDUCTIONS FROM INMATES WAGES, GRATUITIES, AND WORKER'S COMPENSATION BENEFITS IF EMPLOYEED IN A CORRECTIONAL INDUSTRIES JOB OR FROM INMATES RECEIVING THE SAME FROM OUTSIDE RESOURCES.

When the State Legislature created and enacted the provisions of both RCW 9.94A.760 and 72.09.111, it explicitly and expressly as stated in the language placed strict restrictions on the said departments power to collect from inamtes for past restitution and LFO debts. The limited power of the Department is stated as follows:

> "(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or worker's compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional indistries work programs, or otherwise receiving such wages, gratuities, or benefits...The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits."

See RCW 72.09.111 (emphasis added).

The intent of this provision is plain and unambiguous on its face which holds that the Departments collection power for the purposes of satisfying restitution and LFO debts outstanding is limited to only collecting from inmates wages, gratuities, and worker's compensation benefits from inmates working in the said correctional indistry job programs.

The intent of the legislature was equally clear and plain on the intent that the department secretary is to draft a formula that conforms to the statutorial provisions the legislature delegated in allowing the department to collect upon unpaid restitution and LFO amounts to help the clerk. Such is also known as "harmony."

It is without dispute that correctional department inmates are being forced to work and maintain hourly wage records of their time for purposes of being afforded a "gratuity" from the jobs.

It is further without any dispute that if inmates fail to keep working in the prison, he or she will receive a serious infraction under WAC's and will be demoted custody, etc for what is commonly known as "failing to program." This, in and of itself, is a common form of modern slavery which is severly unconstitutional and that issue is reserved for a later date and time.

E. THE DEPARTMENT SECRETARY FORMULATED DOC POLICY 200.000 WHICH IS CONFLICTING TO THE LEGISLATURE'S INTENT AND REQUIREMENTS OF LAW.

The department delegated power to formulate a policy to help the clerk's collect upon unpaid debts is found under RCW 72.09.111 and RCW 9.94A.772. The legislature was strict in setting the laws which were to be adhered to prior to the department's said collection of both Restitution and LFO's. Those laws are briefed at Sec. A-D supra, and will not be repeated for the sake of brevity. The policy also must follow the provisions of RCW 9.94A.753 which allows for restitution to be collected as well as LFO's, but only after the Restitution is paid in full may the LFO's begin to be collected.

The department must first follow the procedural safeguards set forth supra in sections A-D before the collections may begin to occur from inmates. But, DOC Policy 200.000 fails to adhere to the strict provisions, and completly aborts the legislatures true intent, and instead circumvented those provisions and has created a policy that is unlawful and unconstitutional. The policy violates the laws by allowing the following aspects to occur:

1. The policy allows for the LFO's to not be grouped under "LFO'S" as one unit, but instead the LFO section takes 20%, and then the policy allows for 5% for Crime Victim Compensation, another 20% for cost of incarceration, another 20% for Prison Litigation Reform Act,

another 20% for Child Support obligations, another 10% for savings, and another 20% for debt of legal mail or legal photo copies from inmates. That is not the department collecting just LFO's under one section, and allowing the court clerk to separatly distribute the said fees as accorded by law, but instead the department is utilizing the statute to collect LFO's separatly and distinctly, apart from the LFO's which is not lawful, as all the costs are LFO's, not separate costs from LFO's. The amount total is 115% which is ludacris.

2. Next the policy allows the department to collect from an inmates "other deposits-not listed above" (in the Deduction Matrix) which is money that comes from family and friends as gifts and free. These said funds are not considered by law to be "wages, gratuities or worker's compensation" for the sole purpose of the departments being able to collect for LFO's.

3. Next the department is utilizing the legislature to assert that it can also collect from an inmates inheritence a total of 195% to pay off the LFO's (which are separated for the sole purpose of gaining higher percent collections) that an offender owes.

4. Next the department in utilizing the policy has been collecting LFO's without first assuring that the Restitution costs are paid in full to the clerks which RCW 9.94A.760 requires.

5. Next the department has used the legislatures intent to alter that intent to be allowed to collect another 105% for lawsuits of an offender who has Life without the possibility of parole, and a separate 95% from inmates who are regular with lawsuits.

6. The department also has taken the Worker's Compensation and utilized the statute to collect 175% from an inmates comp benefits. See App. A at 83.

Further, the department has began to collect LFO's from inmates without having first obtained a: (a) A monthly assessment from the offender's made under oath as to the offender's ability to be able to make payments towards the outstanding LFO's and Restitution; (b) establishing the inmate's have failed to make a "monthly payment" as required by law; (c) notice of payroll deduction to be allowed to collect inmates correctional industries wages, gratuities, of worker's compensation benefits as allowed by law. See App. A et al.,

Therefore, the department policy 200.000 being created, activated, and enforced is a violation of due process of law and needs revamped to comport to the statutorial provisions it is to adhere to.

4. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION BECAUSE IT ALLOWS THE DEPARTMENT TO VIOLATE THE SEPARATION OF POWERS DOCTRINE?

The petitioner adopts and incorporates by refrence the whole argument pertaining to the separation of powers doctrine as set out in the PRP. See App. A at 13-21. The department failed to respond to this argument and therefore by law has conceeded to the argument that it has, by collecting LFO's and Restitution that is not owed by the petitioner, and further without satisfying the statutorial requirements, violated the separation of powers doctrine by going above the judicial and legislative functions authorized to the department. This court should admonish the department for the severe abuse of process as it pertains to inmates financial debts.

5. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION WHICH FAILS TO APPLY THE "RULE OF LENITY" TO PETITIONER'S CLAIMS?

"Statutory interpretation involves questions of law that the Court reviewws de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9; 43 P.3d 4 (2002). In construing a statute, the court's objective is to determine the legislature's intent. Id. [I]f the

statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. Id. at 9-10. The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)(citing Wash. Pub. Ports Ass'n v. Dep't of Revenue, 148 Wn.2d 637, 645, 62 P.3df 462 (2003); Campbell v Gwinn, 146 Wn.2d at 10-12). If after that examination the provision is still subject to more than one interpretation, it is ambiguous. Id. If a statute is ambiguous, the rule of lenity requires the court to interpret the statute in favor of the defendant absent legislative intent to the contrary. State v. Jacobs, 154 Wn.2d at 600-01 (citing In re Post Sentencing Review of Charles, 135 Wn.2d 239, 249, 955 P.2d 798 (1998); State v. Roberts, 117 Wn.2d 576, 585, 817 P.2d 855 (1991).

The Court of Appeals decided to use a misinterpretation of RCW 72.09.111 in allowing the department to collect upon costs not set by the court in the petitioner's judgment and sentences. The Court failed to give meaning to the plain language of the statute, and further failed to give meaning to the related statutes and statutory scheme as a whole prior to ruling in opposition to the petitioner.

In fact the court also failed to apply the rule of lenity when it stated in its decision:

> "Nothing in Pierce's judgment and sentences purports to set a start date for collection of legal financial obligations. Moreover, even if Pierce's judgment and sentence were so construed, his claim would still clearly fail in light of this court's recent opinion in In re Pers. restraint of Martin, 129 Wn.App. 134, 140, 118 P.3d 387 (2005)("...RCW 9.94A.772 changes the Sentencing reform Act to specifically allow for collection of legal financial obligations during incarceration

despite language in a defendant's judgment and sentence that would direct otherwise."
See App. A at 2.

This court's opinion and citing the martin Court is clearly on its face a manifest error due to the distinguishment of the Martin case. The Martin Court set restitution and fees, and in this case the petitioner's court explicitly waived all costs, and only imposed the mandatory $500.00 VPA which is paid in full. Therefore, the use of Martin is erroneous and this court should so hold on thefacts.

Further, the Court of Appeals decided that even though the court waived the costs, that the statutorial provision of RCW 9.94A.772 still allows the department to collect a separate cost for itself. That interpretation is an absurd and strained meaning of teh legislature's intent behind the judicial power and discretion to impose of waive the costs associated with the Judgment entered.

The department can only collect what a court imposed, and that is the meaning behind RCW's 9.94A.753, 760, 772; and 72.09.111, and these collections are subject to the strict requirements as briefed at 5-19 supra. Which in applying the facts to the laws of this case, the department has not complied with and has violated the judgment pronounced. Also, the petitioner has in fact made every payment on a monthly basis as directed as to the $500.00 fees which are paid off. See App. A at 40-41. Therefore, the court's decision is erroneous in failing to apply all statutes to the facts prior to making the decision dismising the petition as frivolous. Therefore, the rule of lenity applies in this case and should have been applied.

6. SHOULD THIS COURT ACCEPT REVIEW OF THE COURT OF APPEALS DECISION WHICH IS IN VIOLATION OF BOTH STATE AND FEDERAL CONSTITUTIONAL LAWS AND STATE LAWS ESTABLISHING THAT PETITIONER IS UNLAWFULLY RESTRAINED?

Both State and Federal Constitutional right establish that a person is not to be denied life, liberty, or property wihout first being afforded due process of law. See U.S.C.A. 5, 14 and Wash. St. Const. Art. 1, § 3.

The Statutorial Provision of RCW 9.94A.772 holds in pertinent part:

> "... monthly payments and commencment dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment."

See RCW 9.94A.772 (emphasis added).

Furthermore, the provisions of RCW 72.09.010 holds in part:

> "The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender."

See RCW 72.09.010(2).

Therefore, based upon the facts of this case establishing that the petitioner has satisfied on a monthly basis all of the $500.00 VPA fee, and the facts further establishing that the court explicitly waived all other costs in teh petitioner's judgments explicitly does establish a prima facie argument that the department's collection of 75% to 115% to satisfy LFO's that are nonexistent is a direct vilation of due process of the laws and has caused the petitioner to become illegally restrained for the purpose of RAP 16.4(b)(c)(6), the petitioner is entitled to relief as the issue involves a question of broad public importance that further involves a significant and substantial question of law under both Constitutional as well as statutorial grounds for the purpose of invoking RAP 13.4(b)(3)(4).

Therefore, this court should find that the petitioner's state and federal constitutional right to due process was violated by the dept's actions and the laws of washington were violated as well.

F. CONCLUSION.

Based upon the considerations above described, the Supreme Court should accept review of this case, reverse the court of apeals decision, and remand to the court of appeals for further opinions consistent with this Supreme Court's holdings. Or grant relief by this Court as deemed necessary in the interest of justice and out of an abundance of caution to Mr. Pierce.

DATED THIS 3rd day of November, 2009.

Chad Pierce

CHAD A. PIERCE 714567-KB-22-L
AIRWAY HEIGHTS CORRECTION CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

CERTIFICATE OF SERVICE

I, Chad PIerce declare under penalty of perjury that I caused to be deposited into the AHCC Federal mail system a true and correct copy of this petition with affixed appendix to be delivered to the following interested parties:

1. Attorney General of Washington
Robert McKenna
c/o Douglas W. Carr WSBA #17378
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia, WA 98504-0116

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Executed this 16 day of NOVEMBER, 2009.

Chad Pierce

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Matter of the Personal Restraint of:	)	No. 63110-1-I
CHAD ALAN PIERCE,	)	ORDER DISMISSING PERSONAL RESTRAINT PETITION
Petitioner.	)	

Chad Pierce has filed a personal restraint petition challenging the Department of Corrections' (DOC) handling of his inmate funds. Pierce's claims fail to raise a nonfrivolous issue, however, and the petition is accordingly dismissed under RAP 16.11(b).

Pierce was convicted of two counts of first degree child molestation in King County No. 05-1-06490-7 and one count of attempted first degree robbery in King County No. 01-1-10417-5. Pierce now contends DOC is exceeding its statutory authority in deducting money from his trust account for the costs of his incarceration and for the payment of legal financial obligations.

As for the collection of costs for his incarceration, Pierce argues it is inconsistent with provisions in his judgment and sentences. In his attempted robbery judgment and sentence, he notes that the sentencing court neither checked the box indicating costs of incarceration were imposed nor checked the box indicating they were waived. Similarly, in the child molestation judgment and sentence the sentencing court indicated that incarceration costs under RCW 9.94A.760(2) were waived.

The deductions Pierce challenges in this case, however, are made under the authority of RCW 72.09.111, which authorizes deductions from wages, gratuities and worker's compensation benefits any inmate receives for a number of purposes, including up to 20 percent to be paid to DOC for the cost of the inmate's incarceration. Pierce's claim fails because nothing in the provisions of 9.94A.760(2), which applies to the authority of the court to set payment of costs as a condition of sentence, either directly or indirectly serves to limit the express authority of DOC under RCW 72.09.111.

Pierce also contends that the language used by his judgment and sentences means that no legal financial obligations may be collected until after he is released from custody. He points to the standard language, in each sentence, which indicates that he will be required to pay his legal financial obligations on a schedule established by his community corrections officer. But this language merely provides authority for a community corrections officer to set a monthly amount that a released inmate is required to pay. Nothing in Pierce's judgment and sentences purports to set a start date for collection of legal financial obligations. Moreover, even if Pierce's judgment and sentence were so construed, his claim would still clearly fail in light of this court's recent opinion in In re Pers. Restraint of Martin, 129 Wn. App. 135, 140, 118 P.3d 387 (2005) ("...RCW 9.94A.772 changes the Sentencing Reform Act to specifically allow for collection of legal financial obligations during incarceration despite language in a defendant's judgment and sentence that would direct otherwise.")

Finally, in reply, Pierce contends that the DOC has erred by collecting more legal financial obligations that are authorized by one of his sentences. DOC has not had the opportunity to respond to this factual claim. Coming for the first time in reply, this claim is too late. See In re Pers. Restraint of Peterson, 99 Wn. App. 673, 681, 995 P.2d 83 (2000).

Accordingly, Pierce has not met his burden of raising a nonfrivolous issue that the DOC's actions constitute unlawful restraint.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 22nd day of September, 2009.

Acting Chief Judge